

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

PATRICK JOHNSON,

Defendant.

Case No.: 2:-6-cr-13-RLH-RJJ

**ORDER**

(Motion to Vacate under 28 U.S.C. §  
2255– #112)

Before the Court is Defendant Patrick Johnson’s Motion to Vacate under 28 U.S.C. § 2255. (#112, filed on June 13, 2014 ). For the reasons discussed below, the motion is denied.

**BACKGROUND**

Defendant was indicted on a One Count Criminal Indictment (#1) charging him with Possession with Intent to Distribute a Controlled Substance in violation of 18 U.S.C. § 841. Defendant ultimately entered into a plea agreement and the Court sentenced him to a term of 188 months. (#75, Nov. 19, 2007). This sentence was later upheld by the United States Court of Appeals for the Ninth Circuit. (#92, Mar. 4, 2010). In October 2010, Defendant filed a habeas corpus petition pursuant to 28 U.S.C. § 2255, asking the Court to vacate his sentence on several constitutional bases. (#98, filed on Oct. 12, 2010). The Court denied the motion, (#107, Mar. 9,

2011), and denied a certificate of appealability. (#109, Apr. 25, 2011). Defendant then sought a certificate of appealability from the Ninth Circuit, (#108, Apr. 18, 2011), who also denied Defendant's request. (#111, Jan. 20, 2012). Now, Defendant's brings this second habeas corpus petition pursuant to 28 U.S.C. § 2255.

### DISCUSSION

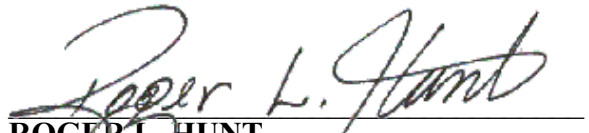
Defendant's § 2255 motion is improper and time-barred. First, under 28 U.S.C. § 2255(h), "a second or successive motion must be certified . . . by a panel of the appropriate court of appeals," before it can be reviewed by the district court. As Defendant has not sought or obtained permission to file this second § 2255 motion, the Court may not consider the petition. Second, under 28 U.S.C. § 2255(f)(1), a petitioner has one year from "the date on which the judgment of conviction becomes final" to bring a motion under § 2255. As Defendant's judgment of conviction became final in 2007, and this motion is being brought nearly 7 years later, Defendant's motion is time-barred. Therefore, for these two reasons, the motion must be denied.

### CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Defendant Patrick Johnson's Motion to Vacate under 28 U.S.C. § 2255. (#112, filed on June 13, 2014 ) is DENIED.

Dated: June 19, 2014.

  
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ROGER L. HUNT  
United States District Judge